

# MORGANTOWN PLANNING COMMISSION

## Minutes

6:30 PM

March 8, 2012

Council Chambers

**MEMBERS PRESENT:** Peter DeMasters, Carol Pyles, Sam Loretta, Tim Stranko, William Wyant, Bill Petros, Ken Martis, Jennifer Selin

**MEMBERS ABSENT:** Michael Shuman

**STAFF:** Heather Dingman, AICP

**I. CALL TO ORDER / ROLL CALL:** DeMasters called the meeting to order at 6:30 pm

**II. GENERAL PUBLIC COMMENTS -** None

**III. MATTERS OF BUSINESS**

**A.** Approval of the January 12, 2012 meeting minutes -POSTPONED

**IV. OLD BUSINESS –** None

**V. NEW BUSINESS:**

**A. S12-01-III / Verizon / 127 High Street:** Request by David Pike, on behalf of Verizon Wireless, for Development of Significant Impact site plan approval of a "Class II Telecommunications Facility" use at 127 High Street (Hotel Morgan); Tax Map 28A, Parcels 24 and 25; B-4, General Business District.

Dingman read the Staff report, stating that Verizon seeks to construct three telecommunication facility antenna enclosures on the top of the Hotel Morgan at 127 High Street. Article 1331.06 requires that Class II telecommunication facilities shall be approved under the standards for a Development of Significant Impact. Addendum A of this report illustrates the location.

Verizon proposes to construct one "Penthouse" style enclosure centered on the building's eastern roof, and two enclosures on the building's western lower roof. The facilities will be in Stealth enclosures that conceal them from view using material that matches the building's color and texture. The plans also include running conduit down the western building face from the roofline to the ground, as well as installation of a generator in the rear yard of the parking lot.

Article 1331.06 regulates Class II telecommunications facilities as follows:

“Antenna or associated electronic equipment shall be designed for co-location on an existing, permitted telecommunications tower, or attachment to an existing building, water tank or other existing structure. Unless specifically being attached to an existing, permitted telecommunications tower, these facilities must be designed utilizing the latest stealth technologies as defined in this Ordinance. They may be attached to an existing, permitted telecommunications tower as a co-location, as per the requirements of this Ordinance.”

The eastern “Penthouse” Stealth rooftop enclosure, referred to as Beta on the applicant’s plans, will be designed with the following key features:

1. The enclosure will be centered across the front of the building
2. The enclosure will be comprised of Stealth material is color-matched to be uniform with the building façade color
3. The enclosure Stealth material texture will determined by owner

The lower western Stealth rooftop enclosures, referred to as Alpha Side and Gamma Side on the applicant’s plans, will be designed with the following key features:

1. The stealth enclosures will be brick relief material.
2. The stealth enclosures brick relief material will be color-matched to the building façade color.
3. The color of the Stealth material will be consistent with the building façade’s brown “band” color, where appropriate.

The conduit on western rear wall will be designed with the following key features:

1. The conduit will be completely enclosed in a noncorrosive material with noncorrosive attachments (bolts, screws, etc.) that will be color-matched to the building.
2. The conduit will be painted to a color uniform to the color of the conduit enclosure and the wall to conceal the conduit as it enters and exits the conduit enclosure, and at any seams of the conduit enclosure system.
3. The noncorrosive conduit enclosure, and any conduit visible as it enters and exits the conduit enclosure, and at any seams of the conduit enclosure system, will be painted and inspected on a regular maintenance schedule to be consistent with all property maintenance ordinances.

The Hotel Morgan is a Contributing Structure in the Nationally Registered Downtown Morgantown Historic District, which is roughly bounded by Chestnut and Spruce St. between Foundry and Willey St. The Hotel Morgan is individually named as a Contributing Structure in that Nationally Registered Downtown Morgantown Historic District, but is not on the National Register as a stand-alone building.

Verizon has worked closely with staff over the last six months to finalize the details of this submission. On February 16, 2012 members of both the Downtown Design Review Committee and the Historic Landmarks Commission met in the Morgantown City Hall Council Chambers to review the subject site plan and elevations. Please see Addendum B dated *February 16, 2012 Hotel Morgan Verizon Telecommunication Facility Plans: Joint Downtown Design Review Committee and Historic Landmarks Committee Recommendations*. That group made several consensus based recommendations, all of which have been incorporated in to these plans.

The group asked that the two existing refrigerant lines on the western side of the building be completely enclosed in the same manner as the conduit lines, and maintained in the same fashion. Although City staff did not require this as condition of approval, the applicant agreed to incorporate this condition according to the satisfaction of the joint Downtown Design Review Committee and Historic Landmarks Commission group's recommendations.

DeMasters recognized David Pike of Pike Legal Group, Regional Counsel for Verizon. Mr. Pike introduced several people that he brought along to help answer questions, Bernie Bomara of Galetta Engineering, Scott Devlin, site acquisition agent, and Andy Wharton, representing the Hotel Morgan, property manager for Roundtable Development. Mr. Pike stated that the reason they seek to do this is allow Verizon to offer its own network services in this area. Verizon requires a series of sites that are interlocked so that the services overlap slightly, but not so as to interfere with each other. The facility they are proposing is less obtrusive than the building of a new cell tower. Mr. Pike thanked Chris Fletcher and Heather Dingman for all of their hard work and research during the last six months. He also thanked them for being willing to hold a joint meeting on February 16<sup>th</sup>, at which all gave approval. Mr. Pike stated that he and his team have worked very hard to answer all questions and take into consideration all recommendations during this process. Because of this, they have a different plan today than the one they started with, but he believes it is a better plan.

Martis asked if the new technology lessen the need for towers, only requiring a high site. Mr. Pike stated that a high site is always required; however, the general trend over time is for shorter sites to increase capacity.

Stranko stated that the aesthetics have been well addressed by all, but he is concerned about any ancillary risk to public health arising from these facilities. Secondly, he stated that the County is developing a nearby property as a new judicial center, which will also increase electro-magnetic activity in that area, as well. He asked if there would be a chance of interference from this other site. Mr. Pike stated that he is legally not permitted to address the first issue, and also pointed out that this Board is also legally unable to consider that, and he would explain why. As for interference from the other site, he stated that they are, of course, an FCC licensed provider. The most valuable

asset Verizon owns is a 'spectrum', for which they paid billions of dollars, which requires them to very precisely stay within those exact perimeters. If they are violated, that is a serious error in which the FCC would become involved and rectify the situation.

In regards to the public health concern issue, Mr. Pike stated that, according to the telecommunications act of 1996 indicates that local planning authorities are prohibited from considering health related risks from radio frequency emissions. That is expressly the consideration of the FCC and the consideration of any issues like that is federally actionable in US District Court. If he responded to that, it would mean he participated in a violation of law. He further stated that what he could assure the Commission of is that the FCC places very high standards in place to assure that the public is protected, and that they are required to be inspected by the FCC to assure that they are in full compliance with those standards.

Petros asked if the generator on the ground is for emergency purposes only. Mr. Pike stated that yes, it is. He further stated that they learned a great deal after hurricane Katrina, and they take great pride that they provide some of the best backup service available.

Stranko asked if there are similar facilities in the downtown. Mr. Pike stated there are a couple of these already on buildings downtown – U.S. Cellular and A T & T.

Loretta asked if the FCC inspection was annual. Mr. Pike stated he was not sure how often inspections took place, but he did know there is an initial inspection, after installation.

Stranko asked if there is a regional or local FCC. Mr. Pike stated it would be the office in Washington, DC.

Selin thanked Mr. Pike for being so adaptable and good to work with.

Mr. Pike stated that this has been a process, but he feels that the fact that there is a 'process' is a good thing and feels that it produces good results.

DeMasters opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the request.

Frank Ferrell, 1309 Dorsey Avenue, stated he has been a Verizon customer for about 15 years. He has been very pleased with their service and stated he is glad that they are considering Morgantown. He asked when they would be operational, and if they anticipated placing retail stores in Morgantown. He also asked if this needed BZA approval. DeMasters asked if anyone was present to speak in opposition to the request. There being no comments in opposition, DeMasters declared the public hearing portion closed.

Mr. Pike answered Mr. Ferrell's question, stating that the mandate is for this to be operational in July – that is, if he approves approval from this Board tonight. He is unsure, at this time, about retail stores in the area. Dingman stated that this case would not need BZA approval.

Dingman read Staff recommendation, stating that The applicant has worked closely with staff and the appropriate public bodies, specifically Downtown Design Review Committee and the Historic Landmarks Commission, to insure that the plans received adequate review and comply with requirements. The proposed telecommunication facilities are co-locations on an existing building, and utilize stealth enclosures as requires by Article 1331. The Stealth material as proposed by the applicant will match the color and texture of the Hotel Morgan, and will therefore not be visually obtrusive. Furthermore, the conduit on the western side of the building will be fully obscured with color-matched enclosure painted to conceal the conduit from all potential vantage points.

Staff recommends approval of the requested site plan as attached hereto with the following conditions:

1. The eastern "Penthouse" Stealth rooftop enclosure, referred to as Beta on the applicant's plans:
  - a. The Stealth enclosure shall be centered across the front of the building
  - b. The enclosure shall be comprised of Stealth material is color-matched to be uniform with the building façade color
2. The lower western Stealth rooftop enclosures, referred to as Alpha Side and Gamma Side on the applicant's plans:
  - a. The Stealth enclosures shall be brick relief material
  - b. The Stealth enclosures brick relief material shall be color-matched to the building façade color
  - c. The color of the Stealth material shall be consistent with the building façade's brown "band" color, where appropriate
3. The conduit on western rear wall shall be designed with the following features:
  - a. The conduit shall be completely enclosed in a noncorrosive material with noncorrosive attachments (bolts, screws, etc.) that will be color-matched to the building.

- b. The conduit shall be painted to a color uniform to the color of the conduit enclosure and the wall to conceal the conduit as it enters and exits the conduit enclosure, and at any seams of the conduit enclosure system.
- c. The conduit enclosure, and any conduit visible as it enters and exits the conduit enclosure, and at any seams of the conduit enclosure system, shall be painted and inspected on a regular maintenance schedule to be consistent with all property maintenance ordinances.

DeMasters mentioned that Mr. Pike agreed to add a condition to the approval that the refrigerant lines be completely enclosed, if necessary.

Stranko made a motion to approve request S12-01, with the inclusion of the above condition into Staff recommendation, and also the additional stipulation that Verizon shall provide the City with the FCC certification of compliance upon commencement of operation; seconded by Martis. Motion carried unanimously.

**B. RZ12-01 / Morlino / 300 & 304 Carson Street:** Request by William Morlino for a zoning map amendment for property located at 300 and 304 Carson Street from R-3, Multi-Family Residential District to B-2, Service Business District; Tax Map 20, Parcels 147 and 148.

Dingman read the Staff report, stating that because the subject area adjoins the B-2 District at the site's eastern side, the proposed zoning map amendment is considered a zoning district boundary adjustment.

According to Article 1345.01 of the Planning and Zoning Code, the purpose of the B-2 District is to:

"Provide areas that are appropriate for most kinds of businesses and services, particularly large space users such as department stores. Typically B-2 districts are located along major thoroughfares.

The following figure is a portion of Map LU-2 of the 1999 Comprehensive Plan and illustrates that the planned use for the subject property is "Public / Institutional."

It appears that the proposed change in zoning classification from R-3 to B-2 is consistent with the planned use of the area and the non-residential use illustrated in the 1999 Comprehensive Plan.

Further, it appears that the subject property is situated where present and future development and land uses may better reflect the Planning and Zoning Code's stated purpose for the B-2 District rather than that of the R-3 District.

Substantial differences between the R-3 and B-2 Districts in terms of commercial use potential should be considered. However, the B-2 District permits a greater scale and density of residential development than the current R-3 zoning.

DeMasters recognized the applicant, Bill Morlino, 2045 University Avenue, who stated that he just seeks to change the zoning to make it uniform with surrounding parcels.

DeMasters opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the request. There being no comments in favor, he then asked if anyone was present to speak in opposition to the request. There being no comments in opposition, DeMasters declared the public hearing portion closed.

Martis asked Dingman if the zoning changes, can structures be built on that property in compliance with the code. Dingman answered yes.

Dingman read Staff recommendation, stating that Zoning map amendment requests should be evaluated on their land-use merits alone. The applicant's development intentions immaterial and the Commission should strictly consider the request on its merits as a land-use decision.

In conducting such an analysis, the Commission should determine if the B-2, Service Business District is the appropriate zoning classification for the subject property, weighing all possible future development and land use scenarios as permitted by the Planning and Zoning Code (please refer to Table 1331.05.01 "Permitted Land Uses").

Staff advises the Commission to forward a recommendation to City Council to approve the requested zoning map amendment so that Parcel 147, 148 of Tax Map 20 is reclassified from R-3, Multi-Family Residential District to the B-2, Service Business District.

Stranko stated that he supports the amendment since the zoning will be consistent with surrounding parcels.

Selin made a motion to approve request RZ12-01; seconded by Stranko. Motion carried unanimously.

**C. MNS12-02 / Idlewood Enterprises, LLC / Windsor Avenue:** Request by Idlewood Enterprises, LLC for minor subdivision approval of property located on Windsor Avenue; Tax Map 6, Parcel 36.2; R-1, Single Family Residential District.

Dingman read the Staff report, stating that the petitioner seeks to subdivide the 1.12 acre residential parcel into four parcels – Lot's A, B, C and D. All four lots will be generally uniform in width and area. Each lot will be approximately 66 feet wide and .28

acre, or 12,212 square feet. Addendum A of this report illustrates the location of the subject site.

The minimum lot area in the R-1 District is 7,500 square feet; therefore, the subject lots exceed the minimum lot area requirement for the District. The minimum lot width in the R-1 District is 70 feet. The subject lots are 66 feet wide, four feet (or 5%) less than the required minimum width.

Article 1315.07 "Variances and Modifications" of the Subdivision Regulations states:

"Where the subdivider can show that a provision of these Subdivision Regulations would cause unnecessary hardship if strictly adhered to and where, in the opinion of the Planning Commission, because of topographical or other conditions peculiar to the site, a departure may be made without destroying the intent of such provision, the Commission may authorize a variance. In granting variances and modifications the Commission may require such conditions as will, in its judgment, secure substantially the objective of the standards or requirements so varied or modified. Any variance or modification thus authorized is required to be entered in writing in the minutes of the Commission and the reasoning on which the departure was justified shall be set forth."

Given that the area of the parcels exceeds the minimum lot area by nearly 5,000 square feet, and the marginal extent of the deviation from the required minimum width, the requested variance appears moderate.

DeMasters recognized the petitioner, Lisa Mardis, Project Management Services, 1165 Hampton Avenue, who stated that she and her client met with the Suncrest Neighborhood Association in January as well as abutting property owners. Their first scenario included five lots; however, after talking with property owners, they decided to shrink it back to four. Mardis stated that a visual survey of property frontages along Windsor Avenue revealed there does not seem to be any consistency, nine of which are non-conforming.

DeMasters asked what the undue hardship would be. Stranko agreed with DeMasters on the hardship.

Mardis stated that her client could put in an internal roadway; however the neighbors wish to keep the lots fronting Windsor and for them to have larger yards. She stated that if the lots were subdivided with the internal roadway, the lots that would border the commercial area would have very steep grade which would take away the quality of the parcel.

Selin expressed her appreciation for them taking the time to meet with the neighborhood folks and the feedback she got from the meeting was the most were satisfied.

Stranko asked if her client would be able to sustain this development with 3 homes and larger lots.

Mardis stated that she didn't think so because her client wants to keep the houses consistent with what is already there.

Petros asked if the setbacks would conform. Mardis stated that they would and there would be no need for a Variance.

Stranko stated that 'cashflow' may be the hardship, if the developer cannot make this work with three houses rather than four.

Selin stated that the Commission does not usually consider that as being a hardship.

Martis stated he feels this is a good asset for Windsor Avenue because it could increase the property values for other homeowners on Windsor and it acts as a shield for the residential neighborhood.

DeMasters stated he is not disagreeing that it would be a good asset for the area, but he is still struggling with the 'undue' hardship and isn't sure the reason given is substantial.

Selin stated she feels the hardship with four houses would be that it would not be the highest and best use of the land, as the parcels would not be as appealing.

Martis stated that when discussing hardship, it is the Commission's place to make reasonable judgments, based on the situation, and that they should be flexible when considering what a 'hardship' is.

DeMasters opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the request. There being no comments in favor, he then asked if anyone was present to speak in opposition to the request. There being no comments in opposition, DeMasters declared the public hearing portion closed.

Dingman read Staff recommendation, stating that Staff recommends approval with the following conditions:

1. That the petitioner submit three (3) original final plat documents signed and sealed by a surveyor licensed in the State of West Virginia for the Planning Commission President's signature; and,
2. That the final plat is filed at the Monongalia County Courthouse within thirty (30) days of meeting the condition set forth above.

Stranko stated that he is troubled by Staff recommendation because the reason for approval is not clearly stated.

Dingman stated that the reason that Staff did not provide further explanation because Subdivision Regulations state “Any variance or modification thus authorized is required to be entered in writing in the minutes of the Commission and the reasoning on which the departure was justified shall be set forth”, the Board has to come to the conclusion of hardship during the course of the meeting. She further stated that staff’s concluded that the hardship in this particular case was based on the configuration of the lot itself. The lot had an excessive depth and narrow width, making a subdivision difficult. She feels that the developer has done the absolute best he can with what he has to work with. Any variance or modification thus authorized is required to be entered in writing in the minutes of the Commission and the reasoning on which the departure was justified shall be set forth.”

Martis added that the rules state that it must be articulated in the minutes.

Selin made a motion to approve request MNS12-02; seconded by Stranko. Motion passed 7-1, with DeMasters voting against.

- D. **MNS12-03 / Habitat for Humanity / Dunn Street:** Request by Monongalia County Habitat for Humanity for minor subdivision approval of property located on Dunn Street, Tax Map 22, Parcel 42; R-1A, Single-Family Residential District.

Stranko recused himself and left the room for this case because his firm represents Habitat for Humanity.

Dingman read the Staff report, stating that the petitioner seeks to subdivide the single-family residential parcel into two parcels – Lot’s 1-B and 1-C. This final subdivision will create two parcels. One 60 foot wide 6,000 square foot parcel, being lot 1-B, and one 90 foot wide 9,000 square foot parcel, being lot 1-C. Addendum A of this report illustrates the location of the subject site.

This property has been the subject of incremental minor subdivisions twice before, once in 1997, and again in 1998. The original owner has gradually given Mon County Habitat for Humanity parcels for redevelopment over the past five years. Both parcels adhere to the minimum lot and minimum frontage requirements in the R-1A District.

DeMasters recognized the applicant, Shawda Cook, Executive Director for Mon County Habitat for Humanity, 209 Greenbag Road, Morgantown. She stated that the donor has previously donated other parcels on which homes have already for Habitat for Humanity. She stated that she would do the best to answer any questions, but that she is relatively new to Habitat.

DeMasters opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the request. There being no comments in favor, he then

asked if anyone was present to speak in opposition to the request. There being no comments in opposition, DeMasters declared the public hearing portion closed.

Dingman read Staff recommendation, stating that Staff recommends approval with the following conditions:

1. That the petitioner submit three (3) original final plat documents signed and sealed by a surveyor licensed in the State of West Virginia for the Planning Commission President's signature; and,
2. That the final plat is filed at the Monongalia County Courthouse within thirty (30) days of meeting the condition set forth above.

Martis made a motion to approve MNS12-03 with staff conditions; seconded by Petros. Motion carried unanimously.

**E. MNS12-04 / Zoey 2, LLC / 1220 Lions Avenue:** Request by Zoey 2, LLC for minor subdivision approval of property located at 1220 Lions Avenue; Tax Map 7, Parcels 29.1 and 30; R-1 Single Family Residential District.

Dingman read the Staff report, stating that the petitioner seeks to adjust the side property boundary by adding fifteen feet of frontage from Parcel 31 to Parcel 30. The proposed adjustment in the side property boundary reduces the extent of existing nonconformity for Parcel 30 as illustrated below.

Standard	Current	Proposed
Min. Lot Frontage – 70 feet	45 feet	60 feet
Min. Lot Area – 7,200 SF	approx. 4,612.7 SF	approx. 6,159.2 SF

No setback encroachments to existing buildings will result by the proposed side property boundary adjustment.

DeMasters recognized the applicant, Bernie Bossio, 30 Vintner Place, Morgantown, who stated he is partner in Zoey 2 LLC, who stated that Zoey 2 owned and operated the building to the left of this parcel. The parcel in question had a structure that was destroyed by fire over the Thanksgiving holiday, 2011. The previous structure was 45 feet in width, so they are taking 15 feet from the neighboring property to add to this

parcel. The home designed should fit there without needing any type of setback variance.

DeMasters opened the public hearing portion of the meeting, asking if anyone was present to speak in favor of the request. There being no comments in favor, he then asked if anyone was present to speak in opposition to the request. There being no comments in opposition, DeMasters declared the public hearing portion closed.

Dingman read Staff recommendation, stating that Staff recommends approval with the following conditions:

1. That the petitioner submit three (3) original final plat documents signed and sealed by a surveyor licensed in the State of West Virginia for the Planning Commission President's signature; and,
2. That the final plat is filed at the Monongalia County Courthouse within thirty (30) days of meeting the condition set forth above.

Stranko made a motion to approve request MNS12-04, with staff recommendations; seconded by Martis. Motion carried unanimously.

## **VI. OTHER BUSINESS:**

### **A. Committee Reports:**

- Traffic Commission: Wyant reported that the Traffic Commission met the evening before and stated that there is much interest in bicycle and pedestrian traffic, and sidewalks. Heavy truck traffic has also been a matter of discussion as it relates to zoning for extractive industries.
- Green Team: No report

**B. Staff Comments:** Dingman talked about another upcoming public workshop. She thanked the Commission members for their involvement in the last CrossRoads Comprehensive Plan Workshop and encouraged them to attend the next one, if possible. The next workshop will be March 28<sup>th</sup> 7:00-9:00 pm at University High School.

## **VII. FOR THE GOOD OF THE COMMISSION:**

Selin mentioned a workshop/conference called "Designing the Divide" being held in Morgantown on March 23 and 24. She encouraged members to look information up on the internet and felt it would be beneficial to Planning Commission members. She also mentioned that the gas and oil extraction zoning ordinance will be on the next agenda.

Wyant stressed that the upcoming workshop on March 28<sup>th</sup> is important due to decisions being made in the future as to where developers invest to get the best land use for infrastructure.

**VIII. ADJOURN:** 8:00 PM

MINUTES APPROVED:

April 12, 2012



BOARD SECRETARY:

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